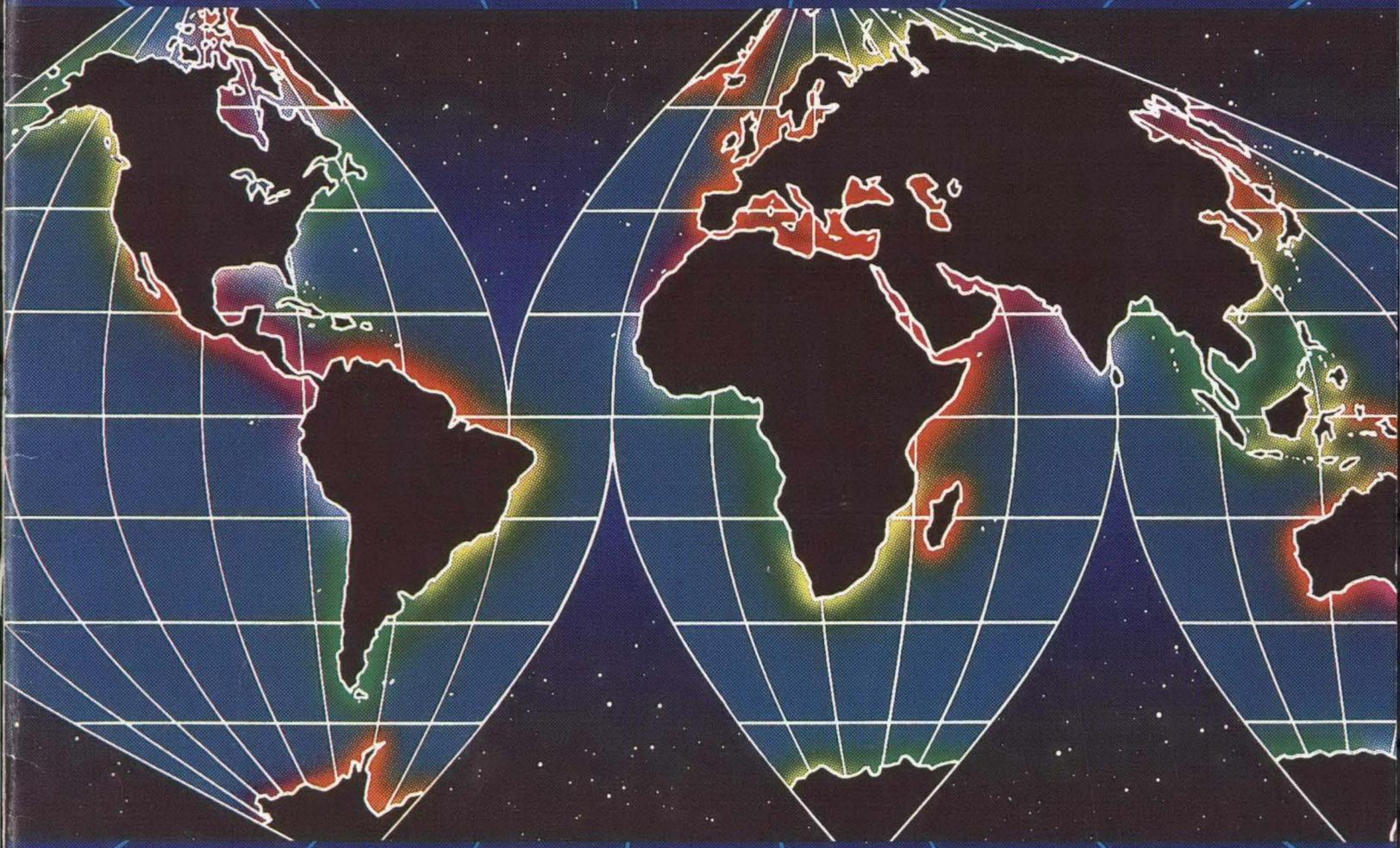




**FBI**

September 1991

**Law Enforcement Bulletin**



**Foreign Counterintelligence  
in a Changing World**



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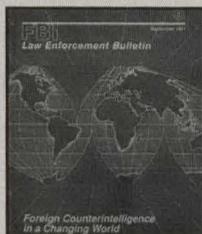
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**The Cover:** This issue focuses on a unified approach to foreign counterintelligence, highlighting the importance of Federal, State, and local cooperation in confronting new FCI challenges.

United States Department of Justice  
Federal Bureau of Investigation  
Washington, DC 20535

William S. Sessions, Director

Contributors' opinions and statements should not be considered as an endorsement for any policy, program, or service by the FBI.

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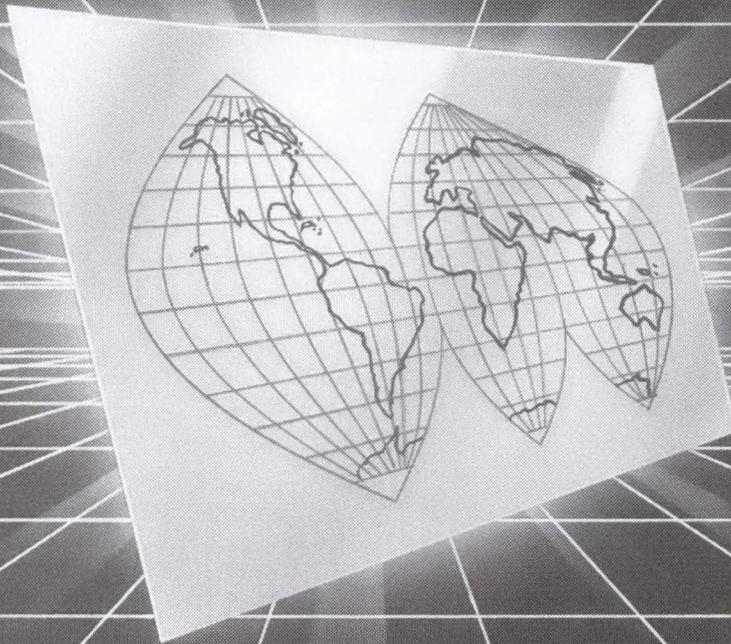
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# *Counterintelligence Challenges in a Changing World*

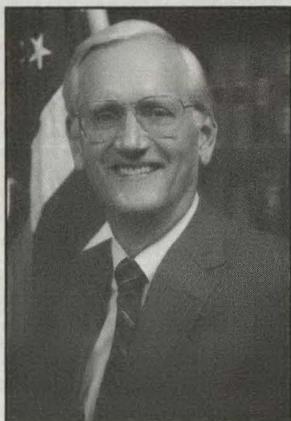
By  
WILLIAM S. SESSIONS



**I**n recent years, the world witnessed some truly amazing events—the fall of the Berlin Wall and the reunification of East and West Germany, the beginnings of democratic governments across Eastern Europe, and the easing of political tensions between the United States and the Soviet Union. As a result, the current perception of most Americans is that foreign intelligence activity directed against the United States and the West is decreasing, and there-

fore, the need for an active, aggressive counterintelligence response has abated. Unfortunately, this is far from true.

There can be no doubt that important changes are taking place in the world today. However, improved diplomatic relations do not necessarily decrease the foreign intelligence threat to U.S. national security. The truth remains: That threat still exists, as it did in the past and as it will in the future.



FBI Director Sessions

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***A heightened awareness by all Americans is the most effective weapon available to...meet the counterintelligence challenges of today and those of the years to come.***  
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### Decade of the 1980s

The last decade of the cold war, the 1980s, was designated by the media as “The Decade of the Spy.” It was a time when Americans knew who their enemies were—a time when President Ronald Reagan referred to the Soviet Union as “The Evil Empire.” The American public showed strong support of counterintelligence efforts and participated in the process by reporting suspicious events.

During the 1980s, more than 45 people were arrested for espionage. Increased human and technical resources, enhanced analytical and training programs, and improved coordination within the U.S. intelligence community and with friendly foreign intelligence services contributed significantly to these arrests. However, much of the success in counterintelligence efforts came as a result of a heightened public awareness of the full damage caused by espionage, as well as the public’s support of the measures designed to protect America’s vital information.

In addition to the importance of public awareness, the 1980s taught us several other important lessons. First, the American public received a rude awakening regarding the vulnerability of the U.S. national security community from spies within its own ranks. For example, both John Walker and Jerry Whitworth served in the U.S. Navy; Karel Koecher, Larry Chin, and Edward Howard all worked for the Central Intelligence Agency (CIA); Ronald Pelton was a National Security Agency employee; Richard Miller was an FBI Special Agent.

Second, many of the dangers were posed by volunteers. That is, many of those arrested during the 1980s, including Walker, simply offered to spy on their country. And they offered to spy not because they had ideological differences with the U.S. Government or ideological sympathy with a foreign government, as was the case during World War II and the first decade of the Cold War. They spied for the basest of reasons—money.

Third, prosecuting spies was found to be an effective tool to determine the extent of the damage caused to national security. Unfortunately, some of the espionage cases of the 1980s resulted in grave damage to U.S. national security interests. But, without the prosecutions that followed, an accurate accounting of what was lost would not have been possible, and appropriate steps to minimize the damage would not have been taken. Fortunately, in 45 percent of the espionage cases during the 1980s, the work the U.S. counterintelligence community uncovered either prevented the espionage activity or significantly limited the damages.

### The Changing World

In the 1990s, with the easing of tensions between superpowers and military blocs, it is no longer possible to identify the U.S. counterintelligence mission in terms of these relationships alone—the world has become much too complex for that. America has negotiated historic arms reduction treaties with the Soviets. The Soviets have introduced their programs of Glasnost, openness to the West, and Perestroika, internal economic and political restructuring. And, the world has witnessed the nations of Eastern Europe revolt against their former Communist leaders in favor of new freedom and economic diversity, and in some cases, more democratic forms of government.

While all Americans can agree that the world has changed, and most see that change as positive in terms of an enhanced prospect for world peace, the public tends to view this

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new world order to be devoid of danger. So, the logic goes, that if there is no longer a threat to U.S. national security, then counterintelligence measures are not needed.

But, the reality is that arms reduction treaties between the United States and the Soviet Union give Soviet "inspectors" potential access to some of this country's most sensitive projects. Glasnost has dramatically expanded the number of exchanges between the United States and the Soviet Union in such areas as business, science, and education. In fact, since Glasnost, the number of Soviets traveling to the United States increased almost 400 percent; in 1990 alone, more than 100,000 Soviets visited the United States. Past experience shows that these exchange groups often contain intelligence officers. Furthermore, the countries of Eastern Europe, while attempting to move away from the Soviet sphere of influence, are now fighting for their own economic survival—and they, too, have a need for Western technology.

#### **Current Intelligence Threats**

Arms control treaties between the Soviet Union and the United States will hopefully lead to a diminished threat level between the nations. However, from a counterintelligence perspective, these treaties will give the Soviet intelligence services routine access to sensitive areas and to knowledgeable Americans who are linked to classified information which, until now, was attainable only on a very limited basis. Other treaties presently being negotiated, concerning strategic arms reduction and chemical weapons,

would require numerous verification sites, again expanding Soviet access.

But, the Soviets are interested in more than American military secrets. The Soviet economy is in desperate shape and can be revitalized with Western technology, capital, and expertise. In order to strengthen that economy, the chairman of the KGB has publicly stated that it plans to assist Soviet businesses because, as he says, "They are not good businessmen." The Soviets have systematically expanded their intelligence collection beyond military intelligence targets and now routinely include Western economic information and technologies.

Since the Soviets can no longer rely on their former surrogate intelligence services in the Eastern Bloc to collect intelligence for them, they must find other sources of intelligence and develop new surrogate

of Glasnost. This, in turn, may have far-reaching implications involving the Soviet military and its intelligence services, U.S. national security, and the emerging "new world order."

All in all, while the nature of the Soviet intelligence threat may be changing, its objectives and actions are not. The Soviet intelligence services are more active now than they have been at any time in the past 10 years, and there is every reason to believe that they will continue their pursuit of Western intelligence during the 1990s.

The threat of Eastern European countries to the United States cannot be fully assessed because they themselves have not yet fully defined the nature and scope of their intelligence services. Some of these countries are no longer collecting intelligence on behalf of the Soviet Union; however, they will, in all likelihood,

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***...improved diplomatic relations do not necessarily decrease the foreign intelligence threat to U.S. national security.***

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services. The Soviets have started using the intelligence services of other countries to obtain Stealth technology and acquire restricted computer technologies for themselves.

Recent repression by the Soviet government of dissent in the Baltic Republics may very well signal a new shift in Soviet internal policy away from the liberalization

refocus their collection activities in the United States to fulfill their own requirements. Since, as with the Soviets, the current major focus of these nations is economic reorganization and growth, they also have a real need for Western technology.

What about the People's Republic of China (PRC)? The PRC has the largest foreign official pres-

ence in the United States—2,700 diplomats and commercial officials, 43,000 scholars, 25,000 commercial delegates visiting the United States annually, and 20,000 emigres coming to America each year. The PRC remains a major counterintelligence threat to the United States. Their intelligence services target well-educated Chinese-American scientists and other professionals who have access to useful information and technology using the approach: "Please help China modernize."

While the Soviet Union, the former Eastern Bloc countries, and the People's Republic of China are all traditional intelligence threats, U.S. counterintelligence efforts can no longer focus exclusively on these countries. In this information age, any number of countries can attempt to establish the infrastructure required to carry out intelligence col-

lection activities in the United States, both overtly and clandestinely. Essentially, Americans need to be concerned about nontraditional intelligence threats to this country as well.

With this point in mind, the intelligence activities of countries in the Middle East and Central Asia are becoming more significant. For example, the Iraqi intelligence service was very active in the United States during the 1980s, and in light of the recent war in the Persian Gulf, its activities are likely to continue.

### **Counterintelligence Responsibilities**

The FBI is charged with countering the hostile activities of foreign intelligence services in the United States by identifying and neutralizing these activities. It does this by penetrating these services, disrupting or publicizing their illegal ac-

tivities, and expelling, arresting, or prosecuting those responsible.

However, the FBI cannot meet its counterintelligence mission alone. Coordination of counterintelligence operations with other members of the intelligence community, and frequently joint operations, is critical to the Bureau's success, along with the support of the Executive and Legislative Branches of the Federal Government, the law enforcement community, and the American public.

While the FBI has the responsibility to make the public more aware of the hostile intelligence threat, it relies heavily on information from the public to fulfill its counterintelligence mission. Because many Americans no longer perceive the Soviet Union and other Eastern European countries as a threat to U.S. security, the FBI must comprehensively expose the full scope of this threat to American institutions, facilities, and citizens. The purpose behind this is to protect national security, not to discourage improved relations and trade between the United States and the rest of the world.

### **Conclusion**

The world is in a constant state of flux. What is true today may not be true tomorrow. For this reason, it is critical to identify the exact nature of any hostile intelligence threat to national security and to counter that threat.

A heightened awareness by all Americans is the most effective weapon available to accomplish this task. By working together, citizens and law enforcement agencies can successfully meet the counterintelligence challenges of today and those of the years to come.

**LEB**

## **INTELLIGENCE TARGETS**

### **• ECONOMIC**

Brokers • Bankers • Finance

### **• TECHNOLOGY**

Business • Institutes • Universities • Laboratories

### **• AGRICULTURE**

Commodity Bankers • Co-ops • Forecasters

### **• ENERGY**

Oil • Gas • Coal • Nuclear • Solar • New Sources

### **• NATIONAL/INTERNATIONAL AGREEMENTS**

Sales and Trade • Exchanges • Cartels

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# Corruption

## A Continuing Challenge for Law Enforcement



By  
OTIS E. COOKSEY

All too frequently, the public's confidence in law enforcement is shaken by reports of officers falling victim to corruption. While no profession is untouched by corruption, its effect on law enforcement is especially damaging. As guardians of law and order in a free society, law enforcement officers must maintain a consistently high standard of integrity.

Combating crime claims many victims from the ranks of law enforcement. As criminals become more violent, increasing numbers of officers are being killed or injured in the line of duty. But increasing numbers of officers are also being

lost to corruption. The lure of fast money associated with the drug trade and other temptations are creating new and potentially devastating problems for police departments and law enforcement managers across the country.

While there is no proven approach to eliminate all corruption, there is an emerging understanding that an effective strategy must begin with recruitment and continue into training. In addition, a procedure should be instituted to investigate charges of police misconduct within an agency. To combat corruption successfully, police managers must acknowledge that it is a serious threat

to the organization, and they must work to reduce its damaging effects.

### ACKNOWLEDGING THE PROBLEM

The key to any effort aimed at preventing corruption in a law enforcement agency is acknowledging that corruption, or the potential for corruption, exists. Given the current environment wherein drug dealers regularly transact business while carrying more cash than an officer makes in a year, law enforcement managers can no longer ignore the issue of corruption.

For the most part, managers use three general approaches when failing to deal with corruption. First, managers attempt the "ostrich" approach, denying the existence of a problem. As a result of this approach, when the manager is faced with an allegation of corruption, there is no effective mechanism in place to deal with the problem. This may force the manager into courses of action directed by those outside the department.

Second, managers try to deal with corruption by taking a "pollyanna" approach. Here, the manager acknowledges that corruption exists in the organization, but downplays its impact. Again, in a situation where the manager fails to respond effectively to an incident, the course of action may be directed from outside the agency.

The third, and potentially most damaging, approach occurs when a manager responds to corruption with a "cover-up." Here, the manager not only acknowledges corruption in the organization but also takes overt action to cover it up. This tactic

violates the special trust and confidence society places in law enforcement and establishes a climate in the agency for corruption to flourish.

Fortunately, the law enforcement manager can overcome the shortfalls of these approaches by taking a more-realistic approach to corruption. To respond effectively to corruption, the manager must acknowledge the devastating impact it can have on an agency. A manager with a realistic appreciation of the potential effects of corruption is in a position to develop a strategy to deal with corruption internally. This will enable the department to minimize the damaging effects of the corruption.

### ESTABLISHING A POLICY

Once the manager is committed to preventing corruption, the next step is developing a policy before a crisis situation develops. While no

one policy will meet the needs of all law enforcement agencies, any effective policy should cover recruitment, training, and investigation.<sup>1</sup>

Before an effective strategy can be established, however, the manager must decide on a suitable definition of corruption. Arthur Niederhoffer defines corruption to include activities ranging from the acceptance of a free cup of coffee to the actual commission of criminal acts.<sup>2</sup> But, including acts on such a wide continuum creates a potential problem for the manager. The dilemma is whether to include this whole range of activities in the policy or to draw a line on the continuum to mark when seemingly innocent acts become corrupt.

The problem for those managers who attempt to "draw the line" or separate degrees of corruption will be the tendency toward interpretation and rationalization. Managers

faced with complex situations must then try to decide on which side of the line an act falls. At the same time, officers serving under this policy can rationalize their actions, and given a healthy imagination, one can rationalize almost any action.

The alternative to defining specific corrupt acts is the approach adopted by the International Association of Chiefs of Police (IACP), which established a definition of corruption by using the intended results of an action, not by the specific acts.<sup>3</sup> The IACP defines corruption as acts involving the misuse of authority by a police officer in a manner designed to produce either personal gain or gain for others. This approach simplifies the manager's role in identifying corrupt actions and provides officers with a simple way of determining where their actions fall in relation to agency policy.

The Model for Management-Corruption Prevention, prepared by the IACP, is an effective tool to aid the law enforcement manager in preparing a corruption prevention policy. This model policy covers the key aspects of a corruption prevention strategy—recruitment, training, and investigation. This model can also be tailored to the specific needs of departments, regardless of size.

### PREVENTION STRATEGY

#### Recruitment

As Edwin J. Delattre notes in his book, *Character and Cops*, people do not just happen to wear badges. They wear badges because police managers recruit and hire them.<sup>4</sup> It is only commonsense, then, that a comprehensive corruption prevention policy address recruitment. No



Major Cooksey is a Military Police Advisor for the U.S. Army Readiness Group, Fort Sam Houston, Texas.

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agency knowingly hires people who will commit corrupt acts in the future. Yet, many departments suffer the devastating effects of corruption. The Los Angeles County Sheriff's Department discharges approximately 20 officers a year, primarily as a result of misconduct.<sup>5</sup>

There are, of course, many reasons why police agencies should screen recruits and eliminate those who may become corrupt. One important factor is money. For all agencies, training is an expensive resource that cannot be wasted. If an officer completes training and then commits corrupt acts, the department faces a potentially more complex and more serious problem, mainly because rehabilitation and disciplinary actions are more difficult and expensive the longer an individual is employed.<sup>6</sup> Law enforcement managers should be alert for signs indicating trouble during the recruitment, initial training, and probationary periods.

An additional concern for departments in the coming years is the declining number of qualified recruit applicants. Reasons for this include low pay and the deteriorated image of law enforcement. Other factors include the increased demand for police officers nationwide and a declining trend in the population of 18 to 25 year olds.<sup>7</sup>

A model that may assist recruitment managers is the Standards Manual of the Law Enforcement Agency Accreditation Program. This model stresses the following guidelines:

- The department should advertise broadly for candidates and not restrict

recruiting to its own jurisdiction,

- The department should have trained personnel conduct a written background investigation of every eligible candidate. In some

and realistic manner is an effective deterrent to corruption for two reasons. First, training publicizes agency policy. A policy that is merely written but not disseminated widely and regularly is likely to be ineffective. Second, training allows officers the opportunity to interact and request

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***Training provides the best and most powerful tool for making a corruption prevention strategy work.***

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cases, the polygraph may be used as an investigative tool,

- The department should have trained personnel conduct an oral interview of each candidate, and also test the candidate's general health, physical fitness and agility, emotional stability, and psychological fitness,
- The department should require all candidates to complete at least a 6-month probationary period and entry-level training.<sup>8</sup>

While this model may not be suitable for every agency, the principles described provide a guide for managers to include recruitment as part of an anticorruption strategy.

### **Training**

Training provides the best and most powerful tool for making a corruption prevention strategy work. Training conducted in an integrated

clarification of standards of conduct in terms of specific actions commonly encountered in police work.

In most agencies today, training is separated into two categories—recruit and inservice. Corruption prevention indoctrination logically begins during recruit training and should be integrated into as many subject areas as possible by the academy instructors. This approach is effective for two reasons. First, this will incorporate corruption prevention standards into the enforcement of laws and regulations. Second, the instructors, usually veteran police officers, have built a rapport and have the respect of the students. They, along with the chaplain, can establish a solid foundation for the new officers to resist corruption.

The second phase of the training process is the inservice training that officers receive during their careers. Inservice training provides a department with a mechanism to

reinforce the standards of corruption prevention.

Law enforcement managers have several options when planning inservice training. Many colleges and universities have courses in sociology, psychology, religion, and management that will reinforce and supplement corruption prevention strategies. In addition, expert consultants can be contracted to develop corruption prevention training programs.

Although academically engaging and easy to institute, neither of these approaches may be as effective and complete as a program developed within the agency. The Los Angeles Sheriff's Department is an example of an agency that decided to create its own training program to combat corruption.

Using its own personnel and based on an assessment of the problem, the sheriff's department designed a program that covered the following:

- Discussions of different ethical dilemmas, preceded by a review of several problem situations,
- Issues of concern, an overview of misconduct cases in the department,
- Standards for decision-making,
- Rationalization, and
- Situational planning

One of the strengths of this program is that it allows open discussion of problem areas and standards of performance required by the agency. It integrates real-life law enforcement issues

with the expected standards of conduct.

### **Investigation**

The last, and possibly most difficult, phase of a corruption prevention strategy to implement is the investigation of police misconduct. However, an effective investigation policy must be established or the other elements of the

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strategy lose their effectiveness. Through objective investigation of all possible incidents involving misconduct, a police agency can foster a sense of confidence and credibility with the public.

Most agencies approach the investigation process by forming an internal affairs unit. To assist in this endeavor, the IACP developed a model that can be used by police departments.<sup>9</sup> This model covers the various issues that should be considered when forming this special unit.

The first task for the manager is staffing. In large departments, several full-time officers may work solely in the internal affairs unit. In small departments, the unit may consist of one officer, operating on an as-needed basis. Another viable alternative for

the small department is to pool resources with other local agencies as situations require.

After the unit is staffed, the manager must decide where to place the internal affairs unit in the organization. Ideally, the unit will report directly to the chief or ranking officer of the agency. The manager should provide clear, comprehensive directives outlining the procedures for dealing with complaints coming from both inside and outside the agency.

The manager should also ensure that the unit investigates all complaints quickly and impartially. The internal affairs unit does not determine guilt or innocence; it merely gathers facts concerning the complaint that should be well-documented. This documentation will ultimately benefit both the officer involved and the public, in the case of an external complaint.

The establishment of an effective internal affairs unit reinforces proper police conduct, as well as ensures the public of effective and honest police service. The existence of an internal affairs unit in the agency structure tells the public and police officers that the department is willing to “police the police” and supports the overall corruption prevention strategy.

### **CONCLUSION**

Corruption can destroy the special bond of trust between law enforcement and the public. Citizens in a free society expect law enforcement officers to perform their duties with a high standard of integrity. When corruption occurs, not only is the bond between police and public strained, but citizen cooperation, on which law enforcement depends, can be jeopardized.

In order to combat corruption effectively, law enforcement managers must first acknowledge the potential for corruption and appreciate the devastating effects it can have on their agencies. The key elements of a corruption prevention strategy should integrate agency policy into recruitment, training, and thorough investigation of all alleged corruption.

While corruption has always been a factor in law enforcement, the need for effective corruption prevention strategies has never been stronger. Today's officers face more violent criminals and more potential temptations. Law enforcement must present a unified front against an increasingly sophisticated criminal element. It is important that managers provide today's officers with proper corruption prevention skills.

**LEB**

#### Footnotes

<sup>1</sup> John D. Glover, "Maintaining Police Integrity: Federal Police of the United States," *Police Studies*, Spring 1986, p. 24.

<sup>2</sup> Sanford H. Kadish, "Corruption," *Encyclopedia of Crime and Justice*, 1983, p. 1161.

<sup>3</sup> International Association of Chiefs of Police, "Models for Management—Corruption Prevention," *Police Chief*, May 1989, p. 60.

<sup>4</sup> Edwin J. Delattre, *Character and Cops* (Washington, D.C.: American Enterprise Institute for Public Policy Research, 1989), p. 117.

<sup>5</sup> Duane T. Preimsberger and Sherman Block, "Values, Standards and Integrity in Law Enforcement: An Emphasis of Job Survival," *Journal of California Law Enforcement*, January 1987, p. 10.

<sup>6</sup> *Supra* note 4, p. 119.

<sup>7</sup> Bruce W. Cameron, "Where Will We Get New Recruits?" *Law and Order*, September 1989, p. 3.

<sup>8</sup> Commission on Accreditation for Law Enforcement Agencies, Inc., "Standards for Law Enforcement Agencies: The Standards Manual of the Law Enforcement Agency Accreditation Program," 1984, pp. 31-32.

<sup>9</sup> International Association of Chiefs of Police, "The Disciplinary Process: Internal Affairs Role," Training Key # 228, undated.

## Victim Information

The National Victims Resource Center (NVRC) provides victim-related information to criminal justice practitioners, policymakers, researchers, and crime victims. It collects, maintains, and disseminates information about national, State, and local victim-related organizations and about State programs that receive funds authorized by the Victims of Crime Act (VOCA). The current listing of resources includes bulletins and special reports, directories, and crime file videotapes and study guides. Each entry provides the title, order number, and cost, if applicable.

To obtain information on the resources available, contact the National Victims Resource Center/NCJRS, Dept. AIF, P.O. Box 6000, Rockville, MD 20850, 1-800-627-6872. In Maryland and the metropolitan Washington, DC, area, the number is 1-301-251-5525 or 5519.

## Hate Crime Data

The FBI's Uniform Crime Reports (UCR) Section has published two bulletins to assist law enforcement agencies in the collection of hate crime data. One bulletin, entitled "Hate Crime Data Collection Guidelines," covers such topics as developing a collection approach, bias motivation, and objective evidence concerning the motivation of the crime. It also offers cautions to be exercised by law enforcement agencies and definitions that have been adopted for use in hate crime reporting. In addition, this bulletin gives examples of reported hate crime incidents and procedures to be followed when submitting hate crime data to UCR.

The other bulletin is entitled "Training Guide for Hate Crime Data Collection." It includes three learning modules for use in instructing law enforcement personnel on hate crime matters.

Copies of both bulletins can be obtained from the Uniform Crime Reports Section, Federal Bureau of Investigation, Washington, DC 20535.

**The Bulletin Reports**, a collection of criminal justice studies, reports, and project findings, is written by Kathy Sulewski. Send your material for consideration to: *FBI Law Enforcement Bulletin*, Room 7262, 10th & Pennsylvania Ave., NW, Washington, DC 20535.

(NOTE: The material presented in this section is intended to be strictly an information source and should not be considered as an endorsement by the FBI for any product or service.)

# Foreign Counterintelligence

## An FBI Priority



By  
JAMES E. TOMLINSON

To law enforcement agencies and the American public, the FBI is recognized traditionally for its criminal investigations of bank robberies, kidnappings, and fugitives. Within the last decade, they also came to learn about the Bureau's active participation in organized crime, white-collar crime, violent crime, and drug investigations. However, few Americans realize that a major investigative responsibility of the FBI is foreign counterintelligence (FCI).

This article provides a brief overview of the FBI's foreign counterintelligence mission. It then addresses how local and State law enforcement can assist the FBI in its FCI efforts.

### The FBI's FCI Mission

The foreign counterintelligence mission of the FBI is to collect, analyze, and use information to identify and neutralize the activities of foreign powers and their agents that adversely affect national security. The Bureau also conducts and/or supervises espionage investigations in U.S. diplomatic establishments abroad and investigates worldwide espionage activity directed against the United States that involves non-military U.S. citizens.

Historically, the FBI has carried on major intelligence and counterintelligence operations since World War II, when it actively sought out Axis saboteurs operating in this

country. Even after the war, the FBI played a role in civilian intelligence collection. However, when the National Security Act of 1947 established the Central Intelligence Agency, which was given the responsibility for collecting positive intelligence,<sup>1</sup> the FBI's focus was directed to counterintelligence.

Since FCI investigations are usually classified, little information on the FBI's efforts is ever disseminated to the public. Only in major espionage cases, such as those involving William Holden Bell, the John Walker family, and Ronald Pelton, did the public even get a glimpse into the Bureau's counterintelligence world. Yet, espionage

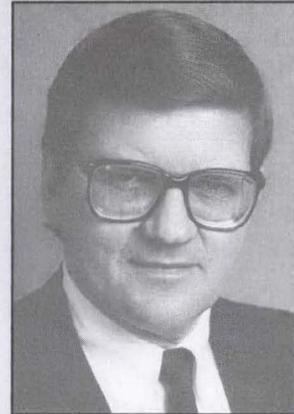
activity still exists in this country. Between 1976 and 1990, there were 67 successful prosecutions for espionage in the United States.

The damage caused by these cases from a financial perspective alone is incalculable. For example, William Holden Bell, a senior radar engineer at Hughes Aircraft Company in Los Angeles, California, received \$110,000 for information passed to Marian Zacharski, a Polish businessman and covert agent for the Polish Intelligence Service. The information Bell provided on the F-15 Look Down-Shoot Down Radar, TOW anti-tank missile, Phoenix air-to-air missile, and quiet radar saved the Soviets<sup>2</sup> approximately \$185 million in technological research and advanced their technology by about 5 years by permitting them to implement proven design concepts.<sup>3</sup> But, the dangers placed on each and every U.S. citizen from a national security standpoint cannot be measured in dollar figures alone.

Arrests and prosecutions for espionage, however, make up only a minute portion of the FCI work that the FBI does. Of greater importance is the ability to identify those involved in espionage activities and to stop them before they pass classified or sensitive information. Early detection of individuals who might be inclined to sell sensitive information or who are targeted for coercive recruitment by foreign intelligence agents to provide such information is the primary goal of the FBI's foreign counterintelligence program.

Prosecution will always be an option for deterrence purposes, but

**“ ...individuals committing espionage or aiding agents of foreign intelligence services are often greater threats to the American public than major criminal offenders. ”**



*Special Agent in Charge Tomlinson heads the Foreign Counterintelligence Division in the FBI's New York City Field Office.*

complete success will only be achieved if detection is accomplished before national security is damaged. For example, in the case of the John Walker spy ring, the U.S. Navy suffered an unprecedented loss of classified data that provided the Soviet Union with information on Naval operations and capabilities. It is estimated that damage to national security was in excess of \$1 billion in research and development alone. However, as an expert witness and outside observer noted during the trial, "...the information provided by Walker was priceless and its acquisition would be beyond the wildest dreams and hopes in the office of the KGB."<sup>4</sup>

#### **FCI Resources**

A sizable portion of the Bureau's work force is dedicated to its FCI mission. In fact, every FBI field office has designated personnel whose primary investigative responsibility is foreign counterintelligence. An

FCI staff may range in size from one Special Agent in a small Midwest office to several hundred in the New York City Office, where foreign counterintelligence is considered the number one investigative priority.

Yet, even though the FBI dedicates a sizable portion of its resources, both personnel and monetary, to counterintelligence, it is still greatly outnumbered by known or suspected foreign intelligence officers. There are nearly 3,000 foreign diplomatic officials in New York City alone who are affiliated with the United Nations or with consular posts and who are from countries with interests traditionally viewed as hostile to the United States.

The FBI has determined that a number of these officials are intelligence officers or have some relationship with foreign intelligence services. While in this country, these intelligence officers enjoy the freedoms of the United States. They have generally unrestricted access

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to public source information, as well as contact with U.S. industrial and academic personnel from whom they can obtain technology and other intelligence-related information. In addition, experience has shown that a threat to U.S. security also exists from nontraditional adversaries. For example, Jonathan Pollard, an intelligence analyst at the Naval Investigative Service, was arrested for spying for Israel, for which he received a life prison sentence.

Despite the resources devoted to FCI investigations, the FBI alone cannot monitor all foreign intelligence service officers adequately. The Bureau recognizes that it needs help to protect the security of this country. And to this end, it enlists the help of the U.S. law enforcement community in its FCI mission.

#### Law Enforcement Cooperation

In cities where most foreign intelligence officers are assigned, such as New York City and Washington, D.C., the FBI has a concentration of FCI resources. However, when foreign intelligence officers travel outside these areas, they are often afforded less scrutiny. Furthermore, individuals not yet identified as intelligence officers, such as diplomats, students, or tourists, may also carry out intelligence functions. This is where local and State law enforcement can assist the FBI.

All law enforcement personnel should be aware of vehicles registered to foreign embassies, consulates, and U.N. missions, and their personnel, traveling in their jurisdictions. These vehicles can be identified by their distinctive license plates. Through the Office of For-

eign Missions Act, the U.S. State Department issues special license plates for vehicles of foreign missions and their staffs accredited in the United States. These license plates are red, white, and blue and have a letter code that denotes the status of the registered owner. The letter "D" signifies diplomat, "C" means a member of a consulate, and "S" denotes a staff member. A separate two-letter abbreviation on the license plate identifies the country of origin of the registrant. For example, the letter designation for the U.S.S.R. is "FC." Therefore, a diplomatic license plate that reads "FCD," along with three numbers, means that the vehicle is registered

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**...not all individuals operating vehicles with...official State Department plates automatically enjoy full diplomatic immunity.**  
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to a Soviet diplomat assigned to the Soviet mission in New York City. A "DFC" designation identifies a Soviet bilateral diplomat assigned to Washington, D.C. Local FBI offices have wallet-size cards available that list the various diplomatic designations.

When these individuals travel outside their diplomatic area, their activities may be of interest to the FBI. This is especially the case if such a license plate is observed in a

rural area, near a U.S. military installation, in the vicinity of a defense contractor, or for that matter, anywhere at an unusual time. Noting the license plate number and reporting it immediately to the local FBI office may be of great importance.

Of course, individuals operating these vehicles may be legitimate diplomats fulfilling their official responsibilities or just traveling on personal business. And since only a small percentage of diplomats are active in clandestine intelligence operations, no action should be taken against these individuals. Providing information on the license plate, the number of occupants, and the location of the vehicle when observed to the local FBI office is all that is necessary.

It should be noted, however, that not all individuals operating vehicles with these official State Department plates automatically enjoy full diplomatic immunity. Such immunity is granted only to those who are accredited by the U.S. Department of State and only to the extent appropriate to their status. Distinctive license plates themselves confer no immunity; they simply alert law enforcement officials that the vehicle's operator is likely to be a person enjoying some degree of immunity.<sup>5</sup>

Law enforcement officers who have any questions regarding the diplomatic status of any individual need only contact the local FBI office or the U.S. Department of State. FBI personnel can quickly confirm through FBI Headquarters and the State Department the individual's official standing and accompanying entitlements.

## Continued Threat to National Security

Even with the many changes occurring in Eastern Europe and the Soviet Union, the FBI must maintain a "business as usual" attitude with regard to counterintelligence operations. As long as the United States continues to be a leader in technological research and design, countries that are less developed will continue to seek a "quick fix" to solve their economic problems. Therefore, despite an era of Glasnost or "openness," Americans cannot afford to disregard the unusual activities of diplomats and foreign visitors who pose a threat to national security.

In addition, because of this new "openness," the high rate of crime and drug problems experienced by Eastern European countries and the Soviet Union is coming to light. In their efforts to address these crime problems, these countries routinely request assistance from U.S. law enforcement. Soviet journalists have requested information regarding laboratory techniques and drug prevention from both the FBI and the Drug Enforcement Administration. More and more, local, State, and other Federal law enforcement agencies, regardless of size, are also being approached to provide crime-fighting assistance to their Eastern European and Soviet counterparts. And, there is every reason to believe that these requests for scientific training and technological information from U.S. agencies will continue.

### Alert to Law Enforcement

Countries seeking assistance from U.S. law enforcement can bene-

SAMPLE OF FOREIGN MISSION LICENSE PLATES	
Nationwide License Plates *	United Nations License Plates
<p><i>Soviet Diplomat</i></p>  <p>Issued By The UNITED STATES DEPARTMENT OF STATE</p>	<p><i>Soviet U.N. Diplomat</i></p>  <p>Issued By The UNITED STATES DEPARTMENT OF STATE</p>
<p><i>Romanian Consul</i></p>  <p>Issued By The UNITED STATES DEPARTMENT OF STATE</p>	<p><i>Romanian U.N. Staff Member</i></p>  <p>Issued By The UNITED STATES DEPARTMENT OF STATE</p>
<p><i>Bulgarian Staff Member</i></p>  <p>Issued By The UNITED STATES DEPARTMENT OF STATE</p>	<p><i>U.N. Secretariat Member</i></p>  <p>Issued By The UNITED STATES DEPARTMENT OF STATE</p>
<p>* COUNTRY CODES</p> <p>FC - U.S.S.R.      ND - Romania      QM - Bulgaria</p>	

fit from the vast knowledge that has been developed over the years. And, because of the unselfish willingness of local, State, and Federal agencies to provide such assistance, the world should see significant improvements in the law enforcement systems operating in Eastern Europe and the Soviet Union. This, in turn, will hopefully result in a more positive image for law enforcement worldwide.

As is often the case, but particularly within the law enforcement community, strong bonds develop between professional personnel. However, U.S. law enforcement officers must remain alert to the distinct possibility of exploitation by Eastern European countries and the Soviet Union. Many foreign law enforcement agencies have strong ties to their intelligence services. And,

these intelligence services, in turn, are very interested in access to U.S. law enforcement computer systems, equipment, training methods, and operational techniques for intelligence purposes.

Accordingly, the FBI has expanded its FCI awareness education program for defense contractors to include U.S. law enforcement agencies that are involved in exchange programs with other countries. Law enforcement agencies are strongly urged to contact their local FBI offices if they plan to participate in an exchange program with a foreign police service. Trained personnel will provide appropriate specialized briefings that can help to ensure foreign intelligence services do not gain information that may be harmful to the interests of national security.

# Police Practices

## Conclusion

The FBI's foreign counterintelligence mission is not as publicized as its other law enforcement functions. However, individuals committing espionage or aiding agents of foreign intelligence services are often greater threats to the American public than major criminal offenders. The collective damages caused by the John Walker spy ring, Ronald Pelton, William Bell, and others, the espionage cases that have occurred since 1985, are beyond financial comprehension.

The FBI alone cannot hope to identify all intelligence activity conducted in the United States and actively monitor all intelligence officers operating in this country. The cooperation and assistance of the U.S. law enforcement community is essential. By working together, local, State, and Federal law enforcement personnel can curtail the inimical activities of foreign intelligence agents in the United States, and thereby, safeguard the security of this Nation.

**LEB**

## Footnotes

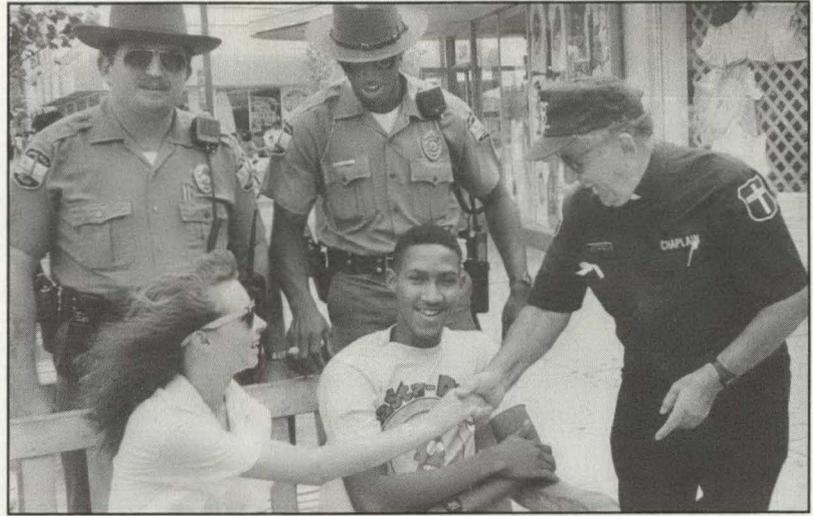
<sup>1</sup> Positive intelligence refers to information gathered from both domestic and foreign sources that may be of use to U.S. Government agencies in fulfilling their responsibilities.

<sup>2</sup> At the time, the Polish Intelligence Service was a surrogate of the KGB, and information acquired by its agents was funneled directly to Moscow.

<sup>3</sup> "Soviet Acquisition of Militarily Significant Western Technology: An Update," (unclassified), Central Intelligence Agency, September 1985, p. 20.

<sup>4</sup> Whitworth Trial Transcripts, Federal District Court, San Francisco, California, 1986.

<sup>5</sup> The Office of Foreign Missions has prepared a booklet entitled "Guidance for Law Enforcement Officers: Personal Rights and Immunities of Foreign Diplomats and Consular Personnel," U.S. Department of State publication No. 9533, revised February 1988, which provides guidance on this and other related issues.



## Ministers Team with Police to Keep the Peace

By  
D.R. STATON AND LARRY EDWARDS

In 1989, an annual Labor Day weekend gathering of college students in the resort city of Virginia Beach, Virginia, erupted into violent rioting. Thousands of students who had gathered to celebrate "Greekfest," so-called because of its origins as a fraternity gathering, took to the streets, looting storefront shops and creating social unrest. The event captured media attention. Nationwide, Americans witnessed the rioting and law enforcement response that mirrored police actions of the 1960s.

Once the student uprising was quelled, the city council and police department looked for ways

to avert similar situations. Virginia Beach had built a reputation as a family vacation spot. But the events of the 1989 Labor Day weekend, combined with rising youth gang activity, threatened to mar the peaceful atmosphere of the resort.

In searching for new approaches to deal with the large number of students (and other young visitors) who stream into the city for the Labor Day weekend, Virginia Beach Police officials focused on a similar event that occurred annually in Daytona Beach, Florida. Each year, college students and other young adults converge on the resort area during

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Spring Break. While slightly higher arrest rates and the expected parking infractions occur during this time, there are no largescale disturbances as the one that took place in Virginia Beach.

### **The Daytona Beach Experience**

When Virginia Beach police officials visited the Daytona area, they found that an integral part of the police department's strategy to quell potential unrest is an expanded police chaplain program. Since its establishment in 1986, the Daytona Beach Police-Ministers Association has served as both a buffer and liaison between the police and the community. The association is made up of area chaplains, both black and white, representing many faiths. The ministers ride with officers throughout the year, but increase their presence during special events, such as Spring Break and college homecomings.

The ministers are trained and sensitized to the rigors of law enforcement. The majority of their instruction comes from the program's coordinator, who is a former police officer.

In addition, the ministers are trained to spot crowd "leaders." As they mingle with groups of young people in the resort area, they explain what the police are doing and why. Though this is not an easy task, their success rate has been very high. As a result, the ministers are credited with quelling many would-be, and potentially explosive, disturbances. They, in particular, create a calming effect upon young, would-be

troublemakers who, at the slightest provocation, could confront the police.

The coordinator of the Daytona association persuaded the Virginia Beach Police Department, and then a somewhat reluctant community, to consider the same approach in that city. The result was the creation of the Virginia Beach Police and Ministers Association.

**“  
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”**

### **Ministers Team Up with Police**

At the direction of the police chief, 40 members of the clergy from Virginia Beach area churches of all denominations were asked to become certified police chaplains. Over 30 volunteer chaplains, including military chaplains from the nearby naval base in Norfolk, attended a weeklong workshop and orientation in June 1990. The coordinator of the Daytona Beach program made several visits to Virginia Beach to help set up the program and to supervise the training. The instruction included:

- Crowd control techniques,
- General communication skills,
- Basic self-defense,
- Police radio operation,
- Patrol car conduct/activity,
- Police patrol regulations and procedures,
- General counseling (of both officers and citizens),
- Instruction concerning when to assist officers,
- Coping with failure,
- Human relations skills, and
- Relating to military personnel.

In addition, the ministers were shown films, complete with critical assessments, of the 1989 riot in Virginia Beach and Daytona's 1990 Spring Break.

On the last day of training, the volunteer chaplains were assigned to accompany officers on foot patrol. One chaplain was assigned to each of the 16 two-officer foot patrol teams covering the resort's main strip roadway. In addition, a chaplain accompanied each of the 12 two-officer units patrolling the boardwalk area (approximately 50 blocks.)

### **Results**

During the first weeks of the program, chaplains proved very effective in calming potentially explosive situations. Often, they succeeded in averting confrontations before police involvement

was required. Gradually, reluctant officers began to request the assistance of the chaplains in various situations.

The volunteer chaplains worked every Friday and Saturday night from June 29th to the Labor Day weekend (also including the July 4th holiday). When the summer tourist season came to an end, the volunteer chaplains had completed 1,626 hours of walking beats with police officers.

### Laborfest 1990

The "big test" for the chaplain program, however, was the Labor Day weekend and the task of helping to "keep the lid" on the potentially explosive annual gathering of students and young adults, now called Laborfest. The holiday weekend was the program's most active, with 35 chaplains contributing 740 hours of service. The result of the chaplains' efforts and the other measures adopted by the city proved very successful. During Labor Day weekend 1989, there were approximately 1,500 arrests and significant property damage to the city. During the same weekend in 1990, there were 100 arrests and only minimal property damage.

There were several reasons for this success. A comprehensive strategy had been developed to al-

leviate some of the factors that contributed to the unrest of the previous year. Checkpoints were erected at the entrances to the resort strip to restrict traffic flow, and only residents and visitors with confirmed accommodations

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were allowed to proceed past the checkpoints. Other motorists were required to park their vehicles at satellite sites where a shuttle service was operating to take them to and from the waterfront. In addition, concerts, dances, and other events were organized by the city, as part of Laborfest.

The chaplain program, too, was an integral part of the police department's strategy to reduce the possibility of unrest. Officers maintained a low profile and

allowed the chaplains to approach problem situations in pairs or groups. When crowds began to get overzealous or rowdy, chaplains provided a calming influence that kept the atmosphere peaceful.

After the Labor Day weekend, 23 chaplains chose to remain active in the program. They were provided additional training and are now assigned to accompany patrol units in all areas of the city. The remaining chaplains are available for special events and for resumption of the summer program.

### Conclusion

When violence and criminal activity threatened the peaceful atmosphere in Virginia Beach, police officials decided to approach the problem with innovative strategies. Basing an expanded police chaplain program on the successful Daytona Beach experience, they were able to provide an effective response to the problem at a minimal cost to the city.

Volunteer chaplains have proved to be a very valuable police resource. They provide a calming influence and help to reduce anxiety during potentially violent situations. In the process, they have helped to foster a sense of good will between the police, the community, and visitors to the resort area.

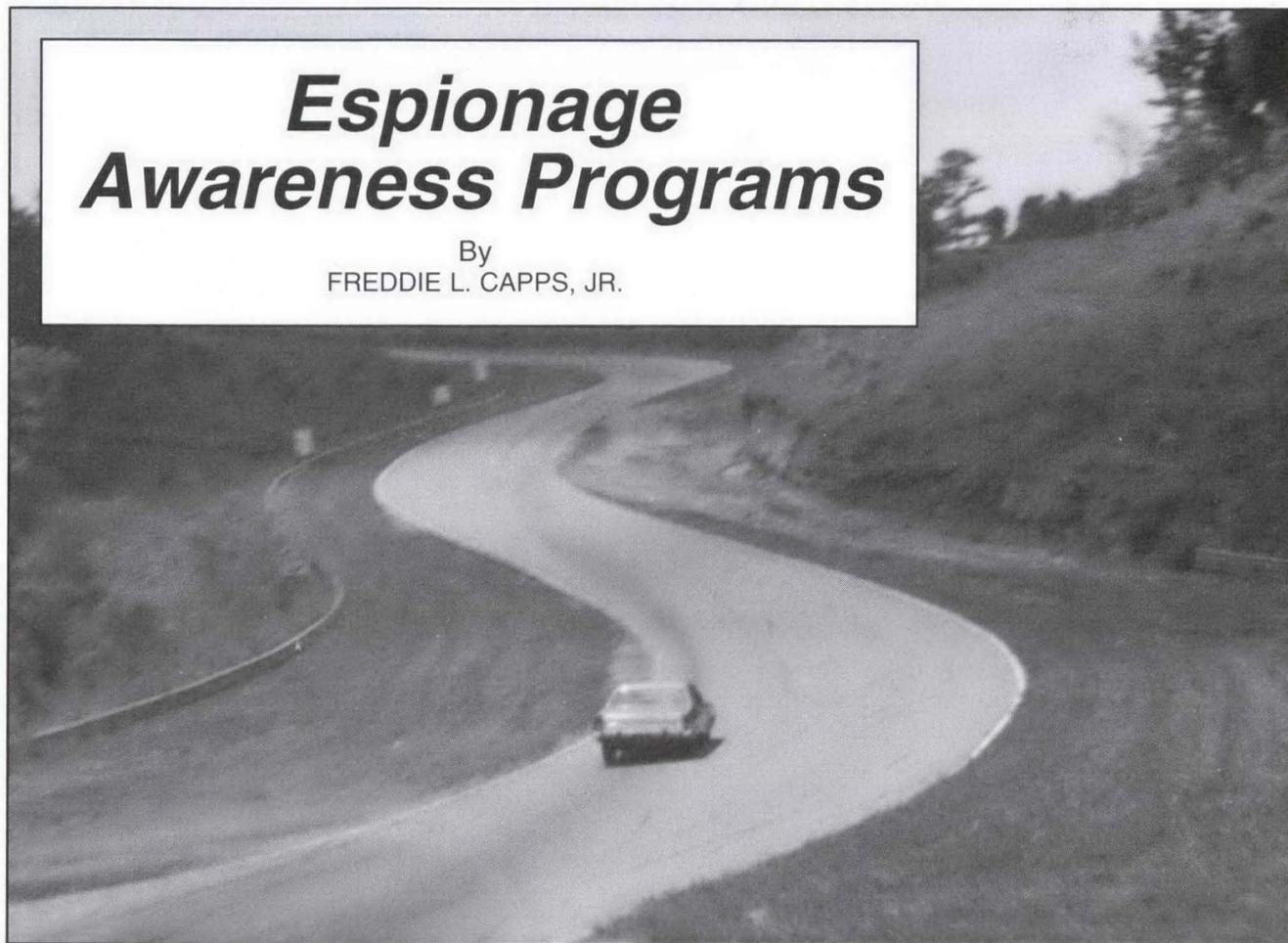
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*Police Practices* serves as an information source for unique or noteworthy methods, techniques, or operations of law enforcement agencies. Submissions should be no more than 750 words (3 pages, double spaced and typed) and should be directed to Kathy Sulewski, Managing Editor, *FBI Law Enforcement Bulletin*, Room 7262, 10th & Pennsylvania Ave., NW, Washington, DC 20535.

Reverend Staton is the President of the Virginia Beach, Virginia, Police and Ministers Association. Reverend Edwards is the coordinator of the Daytona Beach, Florida, Police-Ministers Association.

# Espionage Awareness Programs

By  
FREDDIE L. CAPPS, JR.



**O**n a Saturday morning in January 1980, while on patrol, Cpl. Thomas E. Hutchins, a Maryland State trooper, noticed a car with diplomatic tags traveling slowly on a major highway. The trooper also observed that the driver of the car was constantly checking his rearview mirror as he drove. The actions of the driver, combined with the speed of the vehicle, the early hour, and the diplomatic tags, aroused his suspicions enough that he ran a check of the car's registration. It was registered to a Soviet, Ivan Ivanovich Odintsov. The trooper then asked himself what could a Soviet diplomat be doing at 6:00 a.m. on a

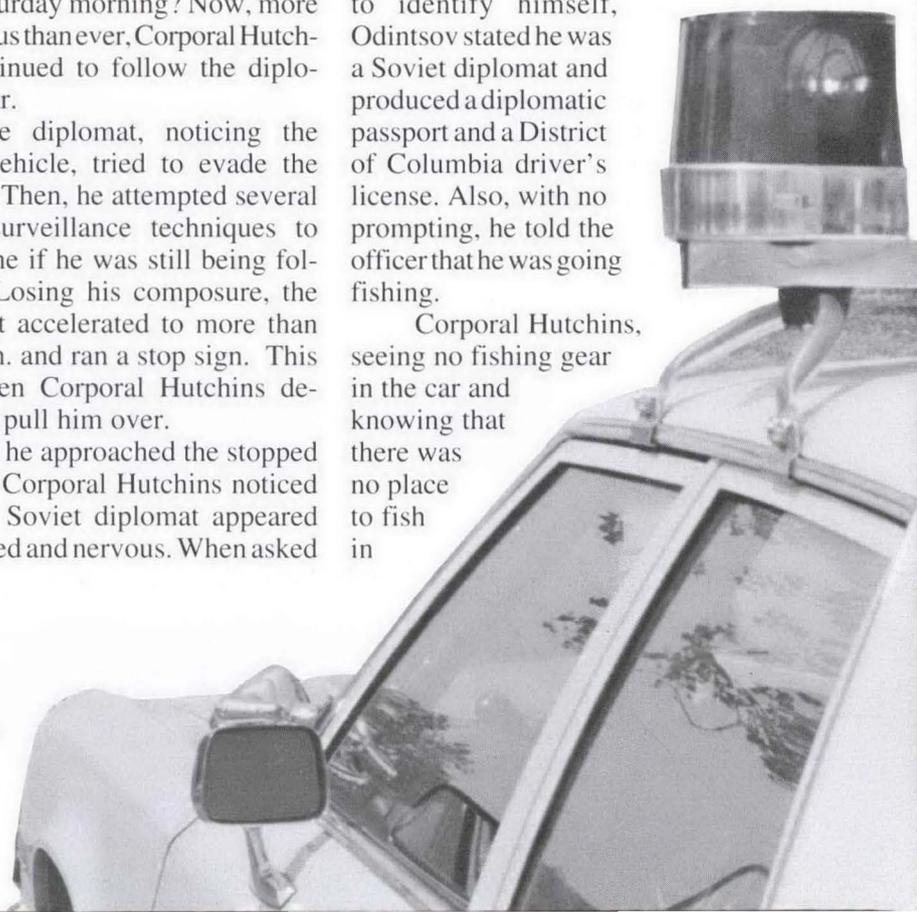
cold Saturday morning? Now, more suspicious than ever, Corporal Hutchins continued to follow the diplomat's car.

The diplomat, noticing the patrol vehicle, tried to evade the trooper. Then, he attempted several countersurveillance techniques to determine if he was still being followed. Losing his composure, the diplomat accelerated to more than 60 m.p.h. and ran a stop sign. This was when Corporal Hutchins decided to pull him over.

As he approached the stopped vehicle, Corporal Hutchins noticed that the Soviet diplomat appeared frightened and nervous. When asked

to identify himself, Odintsov stated he was a Soviet diplomat and produced a diplomatic passport and a District of Columbia driver's license. Also, with no prompting, he told the officer that he was going fishing.

Corporal Hutchins, seeing no fishing gear in the car and knowing that there was no place to fish in





Special Agent Capps, the FBI's National DECA Coordinator, is assigned to the Intelligence Division at FBI Headquarters in Washington, D.C.

“  
...counterintelligence  
is a strategic issue  
that requires a  
coordinated,  
effective national  
response.”

the area, asked his dispatcher to contact the U.S. State Department to advise them of the stop and seek its guidance. A short time later, the dispatcher informed the trooper that no one was available at the State Department at that hour. Concerned about the proximity of the Soviet to Andrews Air Force Base and the Naval Communications Station, which were both less than 5 miles away, but running out of alternatives, he decided to issue the Soviet a warning citation and allowed him to depart. However, before the end of his patrol, the trooper did notify the Security Police at the airbase of the Soviet's presence in the area.

Unknown to Corporal Hutchins, the Soviet was a known KGB intelligence officer. Later, in 1985, the FBI learned that Odintsov was one of the KGB officers responsible for handling John Walker, the most notable Soviet penetration of the U.S. Navy in this century. The fact that Walker was not identified on that Saturday morning, 5 years earlier, was just bad luck.

### Counterintelligence Mission

Identifying agents and activities of foreign intelligence services in the United States is the most difficult task of counterintelligence. Without identification, plans cannot be developed to penetrate and neutralize an espionage operation. However, once the identification is made, even the most sophisticated network can be brought down.

To be successful in its counterintelligence mission, the FBI depends on an informed, enlightened citizenry and local and State law enforcement to assist in the identification process. Public participation in the identification process has led to the identification of past KGB activities, and it still remains critical to current counterintelligence efforts.

Unfortunately, however, the American public's perception of the Soviet threat has changed considerably in recent years. In June 1989, public opinion polls conducted in the United States indicated that 65% of Americans no longer consider the Soviet Union an immediate threat.<sup>1</sup>

And, *Stern Magazine* reported that during the summer of 1989, 50% of West Germans polled believed they were more threatened by the United States than the Soviet Union.<sup>2</sup> Interesting facts, especially since both polls were taken before the fall of the Berlin Wall.

Now, incidents witnessed by American citizens that were previously viewed as suspicious or threatening are no longer seen in that light. In turn, citizens report fewer of these incidents.

Today, the uninformed might conclude that an effective counterintelligence program is no longer necessary. Nothing could be further from the truth. As Nicholas Daniloff, former Moscow reporter for *U.S. News and World Report* and one-time prisoner of the KGB, stated in a recent newspaper article, "Despite the reforms...Soviet spying against the United States will continue with intensity for a long time to come."<sup>3</sup>

What the American public fails to realize is that the Soviets continue to spend billions of dollars annually on espionage and intelligence collections activities in an attempt to close the gap with the West in microelectronics, computers, and sophisticated weapons systems.<sup>4</sup> In fact, heightened citizen awareness and cooperation is needed just as much now as it was in the past.

### The DECA Program

The FBI has developed a variety of techniques and programs to counter the activities of hostile foreign intelligence services in the United States. One of the most effective of these efforts is the Development of Espionage and Counterintelli-

gence Awareness Program (DECA). DECA links the FBI's counterintelligence program to the security countermeasures employed by defense contractors. Under this program, FBI resources are focused on the spys' targets—U.S. employees with access to classified information—not on the intelligence officer or the diplomatic establishment.

The DECA Program operates in all 56 FBI Field Offices. In each office, a DECA coordinator administers the program. The coordinator's primary responsibility is to visit firms that have been awarded classified contracts to update them on current foreign intelligence threats.

Because of the dramatic increase in the threat posed by foreign intelligence services, the focus of the DECA Program has been expanded to now include American firms not engaged in classified government contracts and the public in general. Also, with the increase in exchange programs among Soviet and East European governments and U.S. Government agencies and local law enforcement agencies, DECA coordinators are now providing espionage briefings to other Federal agencies and local police departments.

At the beginning of 1990, the FBI appointed a national DECA coordinator (NDC) to manage the program throughout the country. A short time later, a national DECA advisory committee was organized. This committee, composed of DECA coordinators from the larger FBI field offices, assists the NDC with the formulation and implementation of DECA goals, training, slides, videos,<sup>5</sup> and literature.

### Industrial Security Awareness Council

In August 1988, as another step designed to increase espionage awareness, the Industrial Security Awareness Council (ISAC) was formed. ISAC is a joint Government/private sector working group whose membership includes the Defense Investigative Service (DIS), the FBI, and 11 defense contractors.<sup>6</sup>

ISAC's goal is to promote security awareness in the defense industry by focusing on the collective resources of industry and government. Its members share awareness resources, thereby reducing

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needless duplication of efforts that occur when companies operate alone, without coordination and cooperation. This concept has since been expanded by DIS and the FBI to other regions of the country and plans are in progress to make it a national organization.

### Conclusion

The United States continues to have secrets that some foreign powers seek and are willing to steal. These secrets go beyond the strategic military and technological infor-

mation that impact on national security. They also include sensitive economic information and proprietary technologies of America's private sector. These technologies may never be classified, but their loss could have a negative impact on those companies who developed them. A loss in the private sector, if significant enough to threaten a company's survival, could also endanger national security.

The successes achieved by Soviet and other foreign intelligence services during the 1980s serve to reinforce the fact that counterintelligence is a strategic issue that requires a coordinated, effective national response. Because the world is so complex and is in a constant state of flux, the FBI must be able to articulate clearly this evolving intelligence threat and work with America's private sector to meet today's counterintelligence challenges successfully.

**LEB**

### Footnotes

<sup>1</sup> David Remnick, *The Washington Post*, June 13, 1989, p. A 1.

<sup>2</sup> *Ibid.*

<sup>3</sup> Nicholas Daniloff, "Reforms In Soviet Union Only Increase Appetites For Secrets From The West," *Los Angeles Times*, August 9, 1989.

<sup>4</sup> Hughes Aircraft Company, *A Counterintelligence Awareness Primer*, 1987, p. 5.

<sup>5</sup> Hughes Aircraft Company and the FBI jointly produced a video entitled "Espionage 2000." This 30-minute video contains interviews of experts in the counterintelligence and security countermeasures fields discussing important awareness issues. It is available to any government agency or defense contractor for use in espionage awareness programs by contacting the FBI, the Defense Investigative Service, or the Hughes Aircraft Company.

<sup>6</sup> The 11 defense contractors are Aerospace Corporation, Hughes Aircraft Company, Jet Propulsion Laboratory, Lockheed Aeronautical Systems Company, Logicon, McDonnell Douglas Corporation, Northrop Corporation, Rockwell International Corporation, Science Applications International, Trident Data Corporation, and TRW.

## Managing for Excellence

By DAVID A. KING

**S**o much has been written on effective personnel management that very little is left to be said on the topic. However, law enforcement is such a unique field that specific methods for selecting, training, deploying, and managing police employees are essential in order for any department to be successful.

Obviously, the police officer is the most visible and important component of a law enforcement agency. How well we use the personnel resources of our police associates will determine how positively the organization is perceived and how successfully we attain organizational goals.

In the past, most agencies went to great lengths to attract and recruit highly motivated, educated individuals. But, once these individuals were in place, they were oftentimes discouraged, and in some instances, even punished for performing tasks outside the "standard" parameters. In doing so, we systematically eliminated innovative, creative thinking at the line level.

### The Community Policing Model

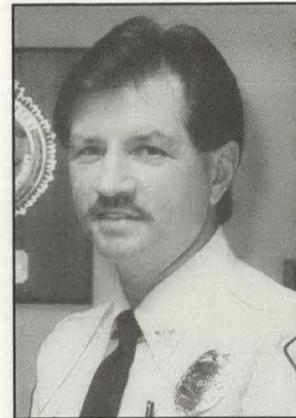
During the late 1970s, when police departments nationwide began facing severe budget constraints, we, as police managers, were forced to look for more

effective methods in order to meet increasing demands for police services. Interestingly enough, one such method was increased cooperation between police officers and members of the community. This led to the creation of separate crime prevention and community service programs in nearly every police department in the country.

At the time, most police administrators believed that additional contact with the public would serve not only to provide increased service to the citizens but also to enhance the police department's professional image. Crime prevention programs provided police departments with the opportunity to move closer to a positive proactive working relationship with the community.

However, this practice eliminated systematically many police officers from the community service equation. The specialized service that "crime prevention officers" now provided set them apart from their patrol division counterparts. Without even realizing it, we had created two distinct, and for the most part, separate law enforcement efforts—crime prevention and traditional police patrol services.

Only recently did we realize that community-based policing



*Chief King commands the Perkasio, Pennsylvania, Police Department.*

must involve every component of the police organization—from administration to command, from investigative to uniformed patrol. All aspects of the police organization need to be joined in a concerted effort with the community to be effective.

Community policing allows us to get back in touch with the citizens and find out how we can work together for the betterment of all. After all, who better to tell us what the real law enforcement problems are in our communities than the citizens we serve. And, it is these same citizens who can tell us how well we are meeting our commitment to address these problems. We cannot possibly determine how effective we are without listening to those who benefit, or suffer, from our efforts.

Traditionally, beat cops took a personal interest in their service areas and were known to be astute

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at detecting, preventing, and suppressing criminal activity through their own innovative expertise. Today, the concept of community policing is merely an extension of that simple philosophy.

### **The Police Officer as a Management Resource**

As police executives, we have sometimes allowed ourselves to become too far removed from the operational aspects of effective law enforcement. In meeting the challenges of providing the department with long-range goal planning, we have sometimes become too concerned with the future and not as aware of the present as we should be. As police administrators, we need to sense the changes in our environments and adjust our methodology to meet those changes.

The line police officers are probably one of the most overlooked management resources in any police agency. No one is more familiar with the environment in which they must operate than law enforcement patrol officers, and no one is more capable of making effective suggestions to meet the demands for their service. Therefore, we must rethink the philosophy that requires unquestioned conformity to departmental procedures and discourages individualism. Instead, we should consider the input of those on the forefront of the criminal activity battleground. Society demands no less.

As administrators, we must empower our employees to make

the kinds of decisions that can be effective for specific problems in the community in which they serve and in which the officer is looked to by the citizen to solve the problem. We need officers who work with and for the community. We need police officers as community organizers who can serve

**“As police administrators, we need to sense the changes in our environments and adjust our methodology to meet those changes.”**

as catalysts for positive action in the crime detection, suppression, and prevention. We need personnel who view members of the public as concerned, supportive, proactive assistants in the law enforcement function. Without an understanding, supportive community, the job of effective policing becomes increasingly more difficult. And, many officers have for too long viewed the general citizenry as more of a nuisance than as an effective tool that could assist them in being a more-

efficient agent against criminal activity.

### **Summary**

Community policing empowers officers to make a real difference. Police administrators need to become supportive of officers in their ranks who can and will serve the community policing model, provided that they are allowed to make practical decisions that use creative and effective resources. As police administrators, we go to great lengths to find the best personnel available to meet the difficult challenges of law enforcement. We must allow them to use those skills and abilities that not only make them good police officers but also allow them to become more-effective public servants.

Administrators have the ability to give patrol officers the support they will need in order to manage their individual community microcosms. By delegating responsibility, empowering, and giving commensurate authority to these officers, we will not only provide the essential components to successful applications of community policing philosophies but we will also become more successful in our search for management excellence.

**LEB**

*Point of View* is a forum for law enforcement professionals to suggest recommendations to improve police work. Submissions for this feature should be typed, double spaced, and forwarded to Editor, *FBI Law Enforcement Bulletin*, Room 7262, 10th & Pennsylvania Ave., NW, Washington, DC 20535.

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# The Kentucky State Police Drug Testing Policy

By  
W. MICHAEL TROOP  
and  
JERRY LOVITT

**T**oday, it is no longer enough for a law enforcement agency to claim that it is drug free; it must prove it. To this end, the Kentucky State Police developed and implemented an employee drug testing policy. This policy is an enhanced version of the Kentucky State Government's policies that will help to promote further the concept, and hopefully, the reality of a drug-free workplace.

## CREATING THE POLICY

Department administrators set out to make the drug testing policy a product of employees. To begin, they appointed representatives from the Trooper Advisory Panel and the Civilian Advisory Panel, whose members are elected by sworn and civilian employees respectively, to a Drug Testing Advisory Committee.



Then, employees from other areas of the agency, such as data processing, the laboratory, personnel, and the Legal Office, were also appointed to the committee. A Branch Commander from the Operations Division headed the 16-member committee. After 4 months of research and planning, the committee formulated a drug testing policy that was fair, workable, and one that ensured employee privacy, integrity, and dignity throughout the testing process.

The committee also developed a 20-page booklet to communicate the key points of the drug policy to the employees. And, prior to implementing the policy, a staff officer visited each of the Kentucky State Police's 16 posts to present the program to the employees and to address their questions and concerns. Additionally, post and section commanders received training in the drug testing program procedures.

## THE DRUG TESTING PROCESS

### Random Drug Testing

As of January 1, 1991, all sworn employees hired since 1984, when drug testing of job applicants began, and all aircraft support personnel became subject to random drug testing. Employees hired prior to 1984

are also subject to random drug testing. Random drug testing of civilian employees in certain safety-sensitive classifications, such as arson investigations, communications, the forensic laboratory, and in the armed facilities security section, will also become mandatory in 1991. However, before an agency employee can be randomly tested, written authorization is obtained on a voluntary consent form. This form stipulates that the employee agrees to be drug tested no less than once and no more than twice over a 2-year period.

### Specific Selection Drug Testing

In addition to a random drug testing policy, the committee also set a specific selection drug testing policy. Under this policy, drug testing is mandatory for the following groups of employees:

- All sworn employee applicants
- Employees eligible for promotion
- Employees transferring into aircraft support
- Drug enforcement/special investigations staff members
- Special response team members and/or those involved in drug interdiction work.

Drug testing is also required for any sworn employee upon documented, reasonable suspicion of illegal drug use. If an employee refuses to be tested for possible drug use, they are then subject to disciplinary action. In addition, should an employee be involved in an accident

or critical incident, drug testing is available upon request.

### The Drug Test

Every Monday, the post and section commanders coordinate the matching of employee names to individual identification numbers—not Social Security numbers. Only those employees subject to and available for random drug testing during a particular week are assigned identification numbers. Then, the identification numbers only are forwarded to the agency's personnel branch for entry into a computer system. The computer randomly selects a subset of the entered identification numbers, and any employee whose identification number matches one of the numbers that the computer selects will be drug tested within 5 working days. The selected employees' post

or section commanders withholds notification of testing until the day of the test so that drug testing is not compromised and that it occurs in a timely and efficient manner.

Drug testing is performed through urinalysis. Only Kentucky State Police Forensic Laboratory personnel and post or section commanders are authorized to administer the drug tests. At the time of the test, each employee is asked to complete a more-detailed voluntary consent form. This enhanced consent form: 1) Requests employee permission for a urine specimen to be collected and tested; 2) describes the list of drugs for which the specimen will be tested; 3) describes how the test results will be used and to whom they may be communicated; 4) delineates possible agency action if the test is positive; and 5) informs the em-



Mr. Troop



Major Lovitt

*Mr. Troop is the Acting Kentucky State Police Commissioner and the Secretary of Justice. Major Lovitt is the Commander of the East Branch, Operations Division of the Kentucky State Police.*

ployee of the consequences of violating any testing procedure. The form also requests a list of any medication the employee has taken over the last 15 days.

The employee is then handed a sealed, plastic specimen container with a built-in thermometer. The employee provides the urine specimen in a secured, private restroom. In the interest of employee privacy, there are no witnesses, and disrobing is not required. When the employee returns the filled specimen container to the drug testing personnel, it is immediately checked for temperature to ensure that the employee has provided an authentic sample. Next, in the presence of the employee, the specimen is divided into two containers. One of the samples is held as a control sample in case an employee would wish to verify positive results later with a laboratory of their choosing.

Drug testing personnel then explain the chain-of-custody form to the employee. Once the employee verifies the information on this form, drug testing personnel seal the specimen containers with lids and with tamper-proof sealing tape. A label that identifies the specimens only by employee identification number is affixed to each container. The employee, after verifying that the identification number on the specimen containers matches the identification number on the list held by the post or section commander, signs off on this list. Afterward, drug testing personnel forward the chain-of-custody form and the specimen containers to the Kentucky State Police Forensic Laboratory.

**“...the general public has a right to expect a stricter accounting of law enforcement employees concerning possible illegal drug use....”**



At the laboratory, each employee's specimen is checked for possible tampering, logged in, and processed. A test tube sample is also drawn from an original specimen and stored for future testing, if needed. Several test tube samples are batched together, of which approximately 20 percent will be control samples for quality assurance checks.

#### **Analysis**

Immunoassay tests are used to screen the samples. These tests serve to identify substances, such as proteins, through their ability to stimulate physical responses from the body's immune system. Each specimen is screened for marijuana, cocaine, opiates, amphetamines, barbiturates, benzodiazepine, and propoxyphene. It is also checked for the presence of other elements to ensure the authenticity of the urine specimen.

The drug detection levels set in the agency's drug testing policy are as follows:

- Marijuana—50 ng/ml
- Cocaine—300 ng/ml
- Opiates—300 ng/ml
- Amphetamines—300 ng/ml
- Benzodiazepine—300 ng/ml
- Propoxyphene—300 ng/ml

If the first screening of a particular specimen is positive, a more-complex and expensive chemical analysis, such as gas chromatography or mass spectrometry, is performed to confirm the initial results of the immunoassay screening. If this test is positive, the specimen is sent to an independent laboratory for further analysis. A second positive confirmation will trigger administrative and/or disciplinary action against the tested employee.

#### **Agency Response to Positive Test Results**

All test results are sent directly to the Kentucky State Police's Employee Assistance Program—the only place where an identification number can be correlated to an employee's name. From this point, a medical review officer, who is a physician employed on a contract basis, meets privately with the employee whose test results indicate unsanctioned drug use.

If the medical review officer finds no legal reason for the positive test results, the physician notifies the Employee Assistance Program. The Employee Assistance Program then notifies the Internal Affairs Section, if the results concern a sworn employee, or the Legal Office, if the results concern a civilian employee. Internal Affairs or the Legal Office

will then contact the employee. The commissioner, who is empowered to authorize an immediate nondisciplinary administrative leave for the employee in question, is also informed of "presumptive" positive test results.

Any employee found to be involved in illegal drug use faces disciplinary action, up to and including dismissal. However, for prescription drug misuse, the agency's emphasis is on employee rehabilitation only. All employees, regardless of the type of drug use violation, are required to make themselves available to the Employee Assistance Program if referred to the program by a supervisor. Employees may also be required to complete satisfactorily a drug abuse assistance or treatment program as a condition of continued employment.

In an effort to direct employees to the best available drug abuse assistance or treatment programs, the Employee Assistance Program maintains an updated list of drug abuse treatment facilities nationwide.

### CONCLUSION

The Kentucky State Police's drug testing policy is a product of its employees. It provides what is believed to be a total approach to the substance abuse issue, of which drug testing is but one component. The policy also emphasizes employee awareness/education programs; supervisor/manager training; prohibitions against the use, sale, possession or manufacture of illegal drugs; specific guidelines about the misuse of alcohol and prescription drugs; employee and family counseling through the Employee Assistance

Program; and support for long-term rehabilitation. As of February 1991, 98% of all sworn employees have voluntarily submitted to drug testing. As a whole, 84.4% of both sworn and civilian personnel within the Kentucky State Police have been tested.

It is the Kentucky State Police's belief that the general public has a right to expect a stricter accounting of law enforcement employees concerning possible illegal drug use than would routinely be expected of most government employees. Drug testing of law enforcement employees is a small step to take toward meeting that expectation. A law enforcement agency could not deliver a stronger message to the public it serves.

**LEB**



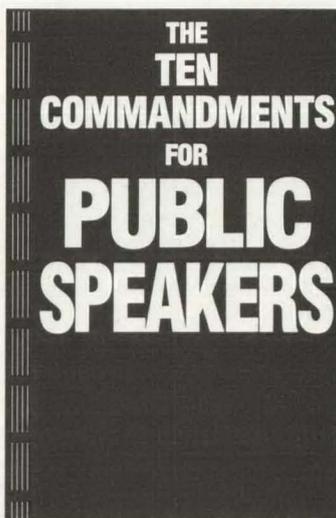
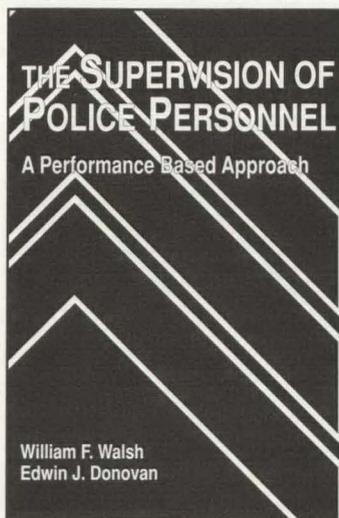
### Wanted: Photographs

The *Bulletin* is always on the lookout for dynamic, law enforcement-related photos for possible publication in our magazine. We are interested in photos that visually depict the many aspects of the law enforcement profession and illustrate the numerous tasks law enforcement personnel perform.

We can use either black-and-white glossy or color prints or slides, although we prefer prints (5x7 or 8x10). Appropriate credit will be given to contributing photographers when their work appears in the magazine. Send your photographs to:

John Ott, Art Director, *FBI Law Enforcement Bulletin*, J. Edgar Hoover F.B.I. Building, 10th and Pennsylvania Avenue, NW, Washington DC, 20535. Telephone (202) 324-3237.

# Book Reviews



**The Supervision of Police Personnel: A Performance Based Approach** by William F. Walsh and Edwin J. Donovan, Kendall/Hunt Publishing, Dubuque, Iowa, 1990.

Sergeants are the odd people out in many police agencies. Although they may be considered as part of the "management team," they usually work and identify far more closely with those they supervise than with those higher in the organization. However, because they are closer to the front line than other management team members, they are more likely to be held responsible when things go wrong. And, although new sergeants invariably hear at promotion ceremonies that their first step up the organizational ladder is the most prodigious, they frequently receive little or no training to prepare them for their new positions.

Sergeants do not receive much help from outside the department either. A large number of books and periodicals are designed

for police policy makers, and a growing body of literature offers tactics and strategies useful for patrol officers and investigators. However, books on first-line supervision are rare.

*The Supervision of Police Personnel: A Performance Based Approach* is a valuable addition to this small shelf of books on first-line police administration. For nearly 2 decades, first at the New York City Police Academy and more recently at Pennsylvania State University, the authors have taught thousands of police supervisors. They combine the lessons acquired during this instruction with their own experiences as front-line supervisors to present a concise and helpful perspective on effective first-line supervision.

The book's 11 chapters define the supervisor's role, analyze various styles of supervision and leadership, and include very important and timely sections on legal aspects of supervision, motivation, and discipline. The

heart of the book, though, is four chapters on performance planning, standards, evaluation, and troubleshooting. Here, the authors suggest that sergeants too often grudgingly accept vague departmental standards of officer performance and evaluation. These chapters provide innovative supervisors with a blueprint for tailoring such expectations and for making them more useful and meaningful.

*The Supervision of Police Personnel: A Performance Based Approach* is full of helpful information and thoughtful analysis. This excellent paperback should be in the library of any aspiring or incumbent supervisor, manager, or trainer. It would also be a good addition to promotional examination bibliographies and to the reading lists of collegiate police science courses.

Reviewed by  
Dr. James J. Fyfe  
The American University  
Washington, DC

**The Ten Commandments for Public Speakers** by Stephen D. Gladis, *Human Resource Development Press, Inc., Amherst, Massachusetts, 1990.*

As the title suggests, *The Ten Commandments for Public Speakers* offers rules to live by for professionals engaged in public speaking. The presentation is concise (126 pages) and colorful, but it covers thoroughly everything either the novice or veteran speaker should know about the subject.

The first commandment, "Thou Shalt Think Before Thou Speaks," stresses the importance of planning before putting pen to paper. It is important, for instance, to evaluate the potential advantages to your agency in accepting an invitation to speak. If the advantages do not outweigh the liabilities in expended time, effort, and resources, then perhaps the invitation should be reconsidered.

If the decision is made to accept an invitation to speak, the next commandments guide the reader through the necessary steps to help ensure a successful presentation. From analyzing the speech commitment to researching the topic and drafting the text, the preliminary steps are addressed in detail. In addition to proven techniques, helpful hints are provided throughout.

Three commandments, "Thou Shalt Deliver" (VII), "Thou Shalt be Prepared for Anything" (IIX), and "Thou Shalt Answer Questions From the Audience" (IX), discuss actual delivery of the speech. Combined, these commandments provide a comprehensive look at the event itself and offer a wealth of suggestions to help the speaker maintain control during even the most distressing circumstances.

The final commandment, "Thou Shalt Publicize Thy Speech," is intended to ensure that a speech, once given, is granted an afterlife. Though this final step is often overlooked, it should not be. Agencies devote considerable time and resources to develop an effective speech and should, therefore, ensure that the information is publicized as widely as possible.

Public speaking is often cited as one of the most universally dreaded experiences. Perhaps the most endearing quality of this book is that it presents public speaking as a manageable and potentially very rewarding experience.

Reviewed by  
Tom Shaw  
Director  
Northern Virginia Criminal  
Justice Academy  
Arlington, Virginia

**Inner-City Crime Control: Can Community Institutions Contribute?** by Anne Thomas Sulton, *Published by the Police Foundation, Washington, DC, 1989.*

The problems are well-known—gangs, drugs, violent crime—and have become dangerously pervasive in today's inner cities. It is becoming increasingly clear that the police, or the criminal justice system for that matter, cannot solve these societal problems alone.

Not only are stiffer penalties, more police, and more prisons not adequate responses, but these so-called solutions are extremely expensive. The criminal justice system already spends billions of dollars every year with little

anticipated return in reducing criminal activity. The question still remains: "What can be done?"

Anne Thomas Sulton has completed a project, "The National Symposium on Community Institutions and Inner-City Crime," that addresses the problems of contemporary crime and discusses some realistic approaches to reducing it. The findings have been published by the Police Foundation in *Inner-City Crime Control: Can Community Institutions Contribute?* As the title suggests, the focus of the book is the impact community-based crime control programs have in actually reducing criminal activity.

The book presents a catalogue and review of 18 inner-city programs, ranging from deferred

prosecution for first-time offenders to police cadet corps. In addition to an overview and summary of each program, specific information regarding contact persons, costs, and replication possibilities is also provided. For criminal justice professionals, this resource can save time and provides ready access to key individuals.

This book is very manageable (113 pages) and can help to expand the range of possibilities for communities considering innovative strategies to combat crime. It is required reading for any chief engaged in, or considering, community-oriented policing.

Reviewed by  
Chief Philip Arreola  
Police Department  
Milwaukee, Wisconsin



## ***Custodial Interrogation Impact of Minnick v. Mississippi***

By  
KIMBERLY A. CRAWFORD, J.D.

**I**n *Minnick v. Mississippi*,<sup>1</sup> the U.S. Supreme Court announced a rule of law that could have a substantial impact on the way many law enforcement agencies conduct custodial interrogations. Specifically, the Court severely curtailed the law enforcement officer's ability to re-

initiate custodial interrogation of suspects who had previously invoked the right to counsel.

This article examines the *Minnick* decision and assesses its impact. It also suggests legitimate steps officers can take to limit its adverse effects on criminal investigations.

### **Summary of Facts**

Robert Minnick and James "Monkey" Dyess escaped from the Clarke County Jail in Mississippi and were in the process of burglarizing a mobile home when they were surprised by the arrival of the occupants. Using weapons found in the home, the escapees murdered two of the occupants and eventually fled the scene in a stolen pickup truck. Minnick was arrested 4 months later in California on a fugitive warrant.

Following his arrest, Minnick was interviewed by two FBI agents. Prior to this interview, he was advised of his *Miranda*<sup>2</sup> rights, and although he refused to sign a waiver, he agreed to answer some questions.<sup>3</sup> During the course of the interview, Minnick made some incriminating statements before telling the agents that he would make a more-complete statement when his lawyer was present. Believing that Minnick had invoked his right to counsel, the agents promptly terminated the interview.

Following the FBI interview, Minnick met with appointed counsel. Three days later, Deputy Sheriff J.C. Denham of Clarke County, Mississippi, arrived in California and attempted to interview Minnick. Although once again declining to sign a written waiver of his *Miranda* rights, Minnick agreed to talk with Denham. Statements made during the subsequent interview ultimately led to Minnick's prosecution for murder.

Prior to trial, Minnick moved to suppress his statements made to Denham. That motion was denied by the trial court, and Minnick was sentenced to death after being found

guilty on two counts of capital murder. Minnick's conviction and sentence were upheld on appeal by the Mississippi Supreme Court.<sup>4</sup> However, on review,<sup>5</sup> the U.S. Supreme Court reversed the conviction.

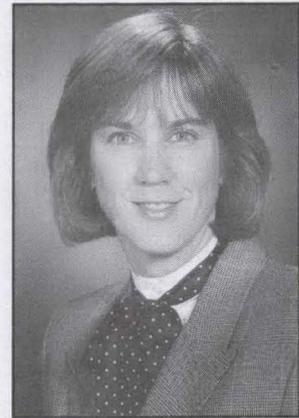
### The Court's Analysis

The fifth amendment to the U.S. Constitution provides in part that "no person...shall be compelled in any criminal case to be a witness against himself..."<sup>6</sup> Over 2 decades ago, the Supreme Court in *Miranda v. Arizona*<sup>7</sup> held that custodial interrogation of an individual creates a psychologically compelling atmosphere that works against this fifth amendment protection.<sup>8</sup>

In other words, the Court in *Miranda* presumed that an individual in custody undergoing police interrogation would feel compelled to respond to police questioning. This compulsion, which is a by-product of most custodial interrogations,<sup>9</sup> directly conflicts with an individual's fifth amendment protection against self-incrimination. Accordingly, the Court developed the now-familiar *Miranda* warnings as a means of reducing the compulsion attendant in custodial interrogations. The *Miranda* rule requires that these warnings be given and the embodied rights waived prior to the initiation of custodial interrogations.

If *Miranda* warnings are given, and individuals in custody choose to exercise their rights by invoking either the right to silence or counsel, the Court has held that all interrogations must cease immediately.<sup>10</sup> Whether, and under what conditions, law enforcement officers may subsequently readvise an individual of his rights

**“ ...once a suspect invokes the right to counsel...law enforcement officers are prohibited from initiating further custodial interrogation involving the original crime or any other criminal act.... ”**



Special Agent Crawford is a legal instructor at the FBI Academy in Quantico, Virginia

and attempt to secure a waiver depends on which rights the individual has invoked.

In *Michigan v. Mosley*,<sup>11</sup> the Supreme Court essentially interpreted the invocation of the right to silence as a request for time so a suspect could think clearly about the situation. If the suspect's initial request is scrupulously honored, the Court held that attempts to reinterrogate may occur if given the time asked for, or if he indicates, by initiating communications, that he had enough time to think and has changed his mind.

As a result, reinterrogations following an invocation of the right to silence are deemed appropriate if: 1) A reasonable period of time has elapsed;<sup>12</sup> or 2) interrogation was initiated by the suspect. In either case, any renewed attempts to interrogate a suspect must be preceded by a fresh warning of *Miranda* rights and a waiver of those rights.

An invocation of the right to counsel, on the other hand, neces-

sarily carries with it a different set of procedural safeguards. Obviously, a suspect invoking the right to counsel is not simply asking for time to assess the situation; he is, instead, requesting the assistance of an attorney. Whether this request is satisfied by giving the suspect an opportunity to consult with an attorney or requires the actual presence of an attorney during questioning was the issue before the Court in *Minnick*.

Minnick's motion to suppress the statements made to Denham was based on his claim that under the fifth amendment,<sup>13</sup> the earlier invocation of his right to counsel during the FBI interview precluded Denham from making any subsequent attempts to question him in the absence of counsel. In opposition, the government argued that Minnick's fifth amendment rights had been satisfied when he was given the opportunity to consult with his counsel on two or three occasions prior to meeting with Denham. In order to resolve this issue, the Supreme Court

found it necessary to revisit the *Miranda* decision and its progeny to determine when, if ever, law enforcement officers may reinitiate interrogation of an in-custody suspect who has invoked the right to counsel.

### **Miranda Revisited**

In *Miranda*, the Court held that "once an individual in custody invokes his right to counsel, interrogation 'must cease until an attorney is present'; at that point, the 'individual must have an opportunity to confer with the attorney and to have him present during any subsequent questioning.'" <sup>14</sup> Later, in *Edwards v. Arizona*, <sup>15</sup> the Supreme Court attempted to clarify its holding in *Miranda* by announcing the following rule:

"...an accused..., having expressed his desire to deal with police only through counsel, is not subject to further interrogation by the authorities *until counsel has been made available to him*, unless the accused himself initiates further communication, exchanges, or conversations with the police."<sup>16</sup> (emphasis added)

Following *Edwards*, many courts focused on the expression "made available to him" and concluded that the rule simply required that a suspect in custody who had invoked the right to counsel be given the opportunity to consult or confer with his attorney before law enforcement officers could lawfully attempt to reinterrogate him.<sup>17</sup> Under this interpretation, there would be no necessity to show that the suspect

had actually consulted with an attorney, but only that he had been afforded the opportunity to do so. The Supreme Court, however, held that such an interpretation of *Edwards* was both unintended and inconsistent with *Miranda*. Therefore, the Court concluded that "when counsel is requested [by a suspect in custody], interrogation must cease, and officials may not reinitiate interrogation without counsel present, whether or not the accused has consulted with his attorney."<sup>18</sup> Applying this rule to the facts in *Minnick*, the Court found that because Minnick had invoked his right to counsel during the FBI interview and Deputy Sheriff Denham subsequently reinitiated interrogation without counsel being present, Minnick's

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...law enforcement officers should be extremely careful when documenting an invocation of rights.  
”**

rights under *Miranda* had been violated, and the resulting statements must be suppressed.

### **Impact of Minnick**

As a result of *Minnick*, law enforcement officers will be unable to interrogate a suspect in custody once that suspect has invoked the right to counsel unless: 1) The suspect's attorney is actually present; or

2) the suspect changes his mind and reinitiates the interrogation.<sup>19</sup> Because the first alternative is frequently unpalatable and the second unlikely, custodial reinterrogations after requests for counsel may quickly become rare.

Although not specifically addressed by the Supreme Court, it is important to note that the rule in *Minnick* will undoubtedly apply regardless of the crime that is the intended topic of the reinterrogation.<sup>20</sup> In other words, when an individual is advised of his *Miranda* rights and invokes the right to counsel, he is not simply saying that he will not deal with the police about the crime for which he has been arrested without the assistance of an attorney. Rather, a request for counsel under these conditions implies that the individual will not deal with the police on *any* criminal matter without the benefit of counsel. Consequently, once a suspect invokes the right to counsel under the fifth amendment, law enforcement officers are prohibited from initiating further custodial interrogation involving the original crime or any other criminal act without complying with the dictates of *Minnick* by having the suspect's attorney present.

Moreover, the rule in *Minnick* appears to be perpetual; once a suspect in custody invokes the right to counsel, the prohibition against reinterrogation remains in effect as long as custody continues. Conceivably, a suspect who invokes the right to counsel during the early stages of custody and is thereafter unable to make bond could be shielded from all further interrogation throughout the remainder of the prosecution

of the case and for as long as he is incarcerated.<sup>21</sup>

### **Limiting the Adverse Effects of *Minnick***

Writing the dissenting opinion in *Minnick*, Justice Scalia recognized the far-reaching effects of the Court's decision on law enforcement when he made the following statement:

"Today's ruling, that the invocation of a right to counsel permanently prevents a police-initiated waiver, makes it largely impossible for the police to urge a prisoner who has initially declined to confess to change his mind—or indeed, even to ask whether he has changed his mind."<sup>22</sup>

While the *Minnick* decision may hamper law enforcement efforts to conduct custodial interrogations, there are certain legitimate steps law enforcement officers can take to limit its adverse effects on criminal investigations.

The first step law enforcement officers should take is to ensure that they understand and take advantage of the procedural differences that are required when a suspect invokes the right to silence as opposed to invoking the right to counsel. Because there is a significant difference between the procedural protections offered to a suspect who invokes the right to counsel and one who merely expresses a desire to remain silent, law enforcement officers should be certain they know which right a suspect is invoking. If, following the advice of rights, the suspect's response leads officers to believe that the suspect is invoking his rights,

but the officers are unsure of which right is being invoked, the officers could conceivably follow up by asking the suspect if he is, in fact, invoking the right to silence. If a suspect gives

be given at that time and the interrogation should cease.

However, a subsequent attempt to interview a suspect could be made after waiting a reasonable period

“

**...law enforcement officers should be certain they know which right a suspect is invoking.**

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an affirmative response, then officers should immediately stop questioning. However, since only the right to silence has been invoked, a second attempt to obtain a waiver may be made after waiting a reasonable period of time.

Similarly, when a suspect is being read his rights for the first time, it may be best to avoid encouraging a blanket invocation of rights that could occur if the entire list of rights is given before inquiring whether the suspect wishes to waive or invoke any or all of them. There is nothing in the rule to preclude the suspect being told first that he has the right to remain silent and then asked whether he wishes to waive that right.

If the suspect indicates a desire to waive the right to silence, then he should be advised of the remainder of his rights and asked whether he wishes to waive those rights as well. If, on the other hand, the suspect is first advised of the right to remain silent and choose to invoke that right, then no further advice of rights need

of time, since only the right to silence was invoked. By refraining from advising a suspect of the right to counsel until the right to silence has been waived, the law enforcement officer may reduce the possibility that the rule in *Minnick* will be triggered.

Along these same lines, law enforcement officers should be extremely careful when documenting an invocation of rights. Because the procedural safeguards offered to a suspect depend on the specific right invoked, officers should maintain accurate records indicating the actual language a suspect used to invoke his rights. By doing so, officers will later be able to establish which right was invoked and demonstrate that they afforded the suspect the appropriate safeguards.

Finally, law enforcement officers should be careful not to apply this rule in instances where it is not required. For example, if a suspect makes a request for counsel at a judicial proceeding, as opposed to during custodial interrogation, police

are not barred from interviewing that suspect concerning other uncharged offenses.

The Court in *Minnick* based its decision on *Miranda*, which is intended to govern custodial interrogations and protect the fifth amendment privilege against self-incrimination. *Minnick* does not apply when the right invoked is the sixth amendment right to counsel.

In *Michigan v. Jackson*,<sup>23</sup> the Court held that an individual's request for the appointment of counsel at an initial appearance constitutes an invocation of the sixth amendment right to counsel, which only precludes police-initiated interrogation regarding the crime for which the individual was charged.<sup>24</sup> And recently, in *McNeil v. Wisconsin*,<sup>25</sup> the Court reaffirmed that the invocation of the sixth amendment right to counsel at issue in *Jackson* is crime-specific and does not make suspects "unapproachable by police officers suspecting them of involvement in other crimes, even though they had never expressed any unwillingness to be questioned."<sup>26</sup>

Thus, a suspect who invokes the sixth amendment right to counsel by requesting the appointment of an attorney at an initial appearance cannot, thereafter, be subjected to police-initiated interrogation regarding the crime for which he has been charged.<sup>27</sup> However, because the suspect's invocation of the sixth amendment rights is not the same as an invocation of the fifth amendment rights, *Minnick* would not preclude police-initiated interrogation on unrelated matters, as long as the *Miranda* safeguards for custodial interrogation are satisfied.

## Conclusion

The Supreme Court's decision in *Minnick* is likely to cause many law enforcement agencies to change their policies and practices regarding custodial interrogations. No longer will law enforcement officers be

“**Minnick does not apply when the right invoked is the sixth amendment right to counsel.**”

permitted to reinstate custodial interrogation of a suspect who had previously invoked the right to counsel without having the suspect's attorney present. When assessing their policies, however, law enforcement agencies should be careful to keep *Minnick* in its proper fifth amendment perspective and consider various options, such as the suggestions discussed above, that could limit the effects of the rule.

**LEB**

### Footnotes

- <sup>1</sup> 111 S.Ct. 486 (1990) (hereinafter cited as *Minnick*).
- <sup>2</sup> *Miranda v. Arizona*, 384 U.S. 436 (1966) (hereinafter cited as *Miranda*).
- <sup>3</sup> The FBI report indicates Minnick waived his rights and said he would not answer "very many" questions. *Minnick*, *supra* note 1, at 488.
- <sup>4</sup> *Minnick v. State*, 551 So.2d 77 (Miss. 1988).
- <sup>5</sup> The Supreme Court granted certiorari at 110 S.Ct. 1921 (1990).
- <sup>6</sup> U.S. Const. Amend. V.
- <sup>7</sup> *Miranda*, *supra* note 2.
- <sup>8</sup> *Id.* at 436.
- <sup>9</sup> Not all forms of custodial interrogation create the compelling atmosphere that *Miranda* was designed to protect against. See, e.g., *Illinois v. Perkins*, 110 S.Ct. 2394 (1990).
- <sup>10</sup> *Miranda*, *supra* note 2, at 474.
- <sup>11</sup> 423 U.S. 96 (1975).

<sup>12</sup> In *Mosley*, 2 hours were considered to be a sufficient period of time. *Id.*

<sup>13</sup> Minnick also claimed that the statements in question were taken in violation of his sixth amendment right to counsel. Reversing Minnick's conviction on fifth amendment grounds, the Court found it unnecessary to address the sixth amendment issue.

<sup>14</sup> *Minnick*, *supra* note 1, at 489, quoting *Miranda*, *supra* note 2, at 474.

<sup>15</sup> 451 U.S. 477 (1981).

<sup>16</sup> *Id.* at 485, 486.

<sup>17</sup> See, e.g., *United States v. Skinner*, 667 F.2d 1306 (9th Cir. 1982), *cert. denied*, 103 S.Ct. 3569 (1983), (court found defendant who was released after requesting counsel, then re-arrested, had the opportunity to consult with counsel, and therefore, his rights were satisfied). See also, *United States v. Halliday*, 658 F.2d 1103 (6th Cir. 1980), *cert. denied*, 102 S.Ct. 978 (1981).

<sup>18</sup> *Minnick*, *supra* note 1, at 491.

<sup>19</sup> In *Minnick*, the Court stated that "Edwards does not foreclose finding a waiver of Fifth Amendment protections after counsel has been requested, provided the accused has initiated the conversation or discussions with the authorities..." *Minnick*, *supra* note 1, at 492.

<sup>20</sup> See, *Arizona v. Roberson*, 108 S.Ct. 2093 (1988), where the Supreme Court held that the assertion of the right to counsel is effective against all topics of custodial interrogation.

<sup>21</sup> In a prison setting, the perpetuity of this rule could make it virtually impossible to conduct routine interrogations of inmates suspected of committing new crimes without having an attorney on hand to represent the inmates' interests.

<sup>22</sup> *Minnick*, *supra* note 1, at 496 (Scalia, J., dissenting).

<sup>23</sup> 106 S.Ct. 1404 (1986).

<sup>24</sup> The Court in *Jackson* found that the rule in *Edwards* applied in the sixth amendment context. Consequently, it can be deduced that reinterrogation would be permitted in the sixth amendment context if initiated by the suspect or done in the presence of the suspect's attorney.

<sup>25</sup> \_\_\_ S.Ct. \_\_\_ (1991).

<sup>26</sup> \_\_\_ S.Ct. \_\_\_, \_\_\_ (1991).

<sup>27</sup> At the present time, it is unclear whether a non-custodial suspect, who previously invoked his sixth amendment right to counsel, could be requested to waive that right without having an attorney present. Because *Edwards* has been applied in the sixth amendment context, and *Minnick* is simply an interpretation of *Edwards*, it would appear that the rule in *Minnick* could preclude any police-initiated attempts to obtain a waiver of a previously invoked sixth amendment right to counsel outside the presence of the suspect's attorney.

*Law enforcement officers of other than Federal jurisdiction who are interested in this article should consult their legal advisor. Some police procedures ruled permissible under Federal constitutional law are of questionable legality under State law or are not permitted at all.*

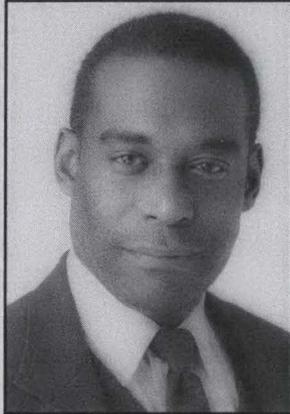
## The Bulletin Notes

Law enforcement officers are challenged daily in the performance of their duties; they face each challenge freely and unselfishly while answering the call to duty. In certain instances, their actions warrant special attention from their respective departments. The *Bulletin* also wants to recognize their exemplary service to the law enforcement profession.

Sgt. W. Joseph Trombley of the Fort Edward, New York, Police Department and another patrolman were attempting to restart a stalled police cruiser when the engine exploded. Burning gasoline sprayed onto the patrolman, engulfing him in flames. Sergeant Trombley quickly exited the vehicle, and after knocking the patrolman to the ground, smothered the flames. Sergeant Trombley then transported the seriously injured officer to the hospital, where he was treated.

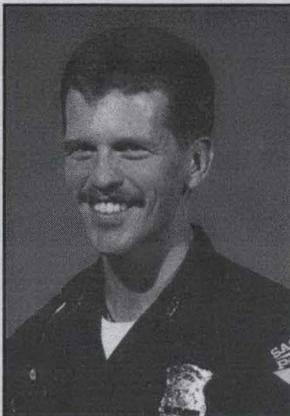


*Sergeant Trombley*



*Deputy Ellis*

While on patrol with his field training officer during a severe rainstorm, Corporal Cornell Ellis of the Fairfax County, Virginia, Sheriff's Office came upon a vehicle that was precariously balanced on its side in a traffic lane. Corporal Ellis, who is an emergency medical technician, immediately ran to the vehicle to check the driver for injuries, after which he radioed his condition to the Emergency Operations Center and administered first aid. When the victim, who had suffered head and spinal injuries, started to have a seizure, Corporal Ellis stabilized him. He continued to care for the injured driver until rescue units arrived.



*Officer Jarabek*

Officer Michael Jarabek of the Saginaw, Michigan, Police Department responded to the report of an armed individual walking down a city street. Even though he did not observe any weapon as he approached the subject, Officer Jarabek began a field interrogation. When the subject failed to respond to his questions, Officer Jarabek started to check him for weapons. At this point, the subject drew a handgun from his pocket and began shooting, striking Officer Jarabek in the back and arm. Two additional shots to the chest were deflected by the officer's safety vest. As the subject attempted to flee the scene, Officer Jarabek returned fire and subdued the assailant, thereby preventing him from harming others.

